Cricket and the Law

The Man in White is Always Right

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1 Introduction

'It's not cricket'. Everyone knows the meaning of these three words. They embody the ideals of fair play, 'gentlemanly' behaviour, and 'good sportsmanship'. What I shall attempt to demonstrate in the rest of this book, however, is that these three words, and all they embody, is in reality, subject to enormous doubt, ambiguity, stress and struggle. While everyone might know what the phrase means at a level of generality, once we turn to the specifics of what might be the actual rules and practices contained in the ideal of 'fair play', in this context, the spirit of the game, or more specifically still, of 'cricket', things become much more complicated. As any good lawyer will tell you, language is full of ambiguity. Indeed, lawyers and judges, to the frustration of the general public, often seem to thrive on making ambiguous that which appears to be perfectly clear.

At some level, that is indeed the project of this book. I want to explore the ambiguities, uncertainties, and contradictions of cricket and of law. The ideal of the uncluttered contest between bat and ball, of willow and leather, which gives to cricket its place in the mythology of England and of Empire, is in fact, and in law, as all of us who love the game in fact must recognize, far from its lived reality. What makes this interesting from a number of perspectives, including perhaps the unexpected angle of legal theory, is that cricket can, and I argue throughout does, offer us exciting lessons about the nature and possibilities inherent in ambiguity and doubt. Indeed, cricket itself, in its laws and practices embodies almost from the beginning these conflicts and contradictions. The *Laws of Cricket* make explicit reference to the 'spirit of the game', which must, at some level at least, be deemed to exceed, or to be outside of, the strict and literal text of the statute.[1] In what follows I will explore in particular contexts three levels of interpretive and practical conflict – the contradictions between and among various readings of the *Laws* themselves; contradictions, real and apparent between the *Laws* and the 'spirit of the game'; and finally, the disagreements about and around the content of our understandings of exactly what constitutes the 'spirit of the game'.

In all of this, I shall attempt to set out the ways in which these interpretive practices and disputes embody and reflect debates within and about law. Law and cricket are, I believe, simply different arenas in which struggles over meanings, interpretations, applications of rules by adjudicators, judges and umpires in

these instances, engage us politically, ideologically and socially. For example, debates about LBW decisions are 'the same' as debates about causation in tort or criminal law; debates about dissent on the field are debates about contempt and respect for legal institutions in a democracy. And sometimes, debates around and about cricket are in reality, debates about the very existence of law and democracy. Recent controversies about the existence of corruption and bribery at the highest levels of the game have brought these concerns to the fore of discussions about the rule of law in cricket. Hansie Cronje has provided us with the possibility for some of the greatest jurisprudential inquiries of the new millennium.

The Jurisprudence of Hansie Cronje

My friend and colleague Allan Hutchinson has argued persuasively in his recent book on judging, not just that law is a game of adjudication, but that the core element of all game playing, including law, is 'good faith'. Good faith is at the heart of the game of law and adjudication which is a practice at once free and constrained. It is the understanding and deployment of good faith that we encounter and play with the vital Hutchinsonian distinction between 'anything goes' and 'anything might go' in judging. Thus, 'Accordingly, good faith can be thought of as acting in line with the spirit of the enterprise in which one is engaged and respecting other people's expectations about what is supposed to happen.'[2]

This insight offers us the constraining limit which operates between and among the apparent contradictions of law and the spirit of the game which I discuss in the subsequent chapters of the book. All the conflicts will be, must be, can only be solved, within a framework in which the expectations of the participants in the game – law or cricket – about the definitional content of the game itself, are met. Judges, plaintiffs, defendants, umpires, spectators, players, all share expectations that certain things will occur within certain, yet often unspecified limitations. Judges must decide on the basis of accepted practices and discourses. They must adjudicate, even when in the process of that adjudication, they must call upon some uncertain criteria, for example 'public policy'. They may not, they must not, simply 'flip a coin', they must decide and they must decide as judges. It is when these limitations, however uncertain, on the judicial function, are violated, when good faith ceases to exist, that at some level, we are no longer playing the game. Throughout this book, I want to explore these boundaries at the two levels of playing the game and not playing the game, of law and not law, of the point at which violation of the *Laws* becomes at a true level, not cricket.

This is what happened, perhaps, in South Africa in early 2000, when England met the host country in the fifth Test at Centurion Park. When they visited South Africa for this Test match series, as usual, England lost. But they did not lose everything. In the fifth Test, at Centurion Park in Pretoria, England actually won a game. But this is in reality and in law of secondary importance. What is

vital here is the way in which they won, for quite literally, the very existence of cricket and the law hang in the balance.

A normal Test match will be played, if it lasts the distance, over five days. Each team will bat, if required, in each of its two innings until its 10 wickets have fallen. Thus, as we know, the winner is the team which scores more total runs than the other side while managing to take the 20 opposition wickets. The *Laws of Cricket* allow a captain to 'declare' the team's innings closed before all wickets have been lost. Normally this will occur when a team feels it has enough runs to win the game and wishes to leave itself enough time to bowl the other team out in order to win the match. However, this is not what happened at Centurion Park.

There, almost all of the first four days of play had been lost due to rain. In the normal course of events, the batting side, the South Africans in this case, would have batted on day five until it became obvious under the *Laws* that no result was possible and the match would have ended in the typical dull sort of draw for which English cricket in particular has unfortunately been noted. However, the South African captain, Hansie Cronje, met with the England captain Nasser Hussain, at breakfast before the final day's play and proposed a novel, even revolutionary, solution. Cronje would 'declare' his innings closed, after setting a score which England had a reasonable, but far from certain, chance to overcome in its second innings. In return, England would 'declare' their first innings without batting. In other words, the Test would be played to its full in one day instead of five, an exciting run chase would be guaranteed for the fans instead of the predictable batting practice. The 'spirit of the game' would triumph, as the recent trend of captains trying for a 'result', in other words a win or a loss, to go down fighting etc., would be carried out by the two sides here. Hussain agreed. South Africa set a target and England won in the last over of an exciting day's play.

Centurion Park was the first time in the history of Test cricket that a side had 'declared' its innings without batting. For the jurisprudential traditionalists, this constituted a 'forfeiture', rather than a declaration. Under the *Laws* in effect at the time, they had a good point. A strict reading of the *Laws* would indicate that such an act by Hussain was 'illegal'. Under Law 14(1) and (2) of the 1980 *Code*, it appears to be quite clear that

> **1. Time of Declaration**
> The Captain of the batting side may declare an innings closed at any time during a match irrespective of its duration.
> **2. Forfeiture of Second Innings**
> A Captain may forfeit his second innings, provided his decision to do so is notified to the opposing Captain and Umpires in sufficient time to allow 7 minutes rolling of the pitch.

Law 12 added that a match 'shall be of one or two innings according to the agreement of the sides prior to play' and Law 15 of the 1980 *Code* indicated that

> **1. Call of Play**
> At the start of each innings and of each day's play and on the resumption of play after any interval or interruption the Umpire at the Bowler's end shall call 'play'.

Reading these provisions of the *Laws* in force at the time, it would seem clear that Hussain's decision not to bat at all in England's first innings constituted a 'forfeiture', rather than a 'declaration'. An innings can be declared 'closed' under these provisions only 'at any time' during the match. If there is to be a difference between a 'declaration' and a 'forfeiture' on these textual provisions, it must be that a declaration can only take place once play has started by the umpire calling 'play'. Not batting at all, a captain cannot close that which has not already been opened. Since the 'forfeiture' provision of the 1980 *Code* applied only to a second innings, Nasser Hussain acted illegally in forfeiting his first innings. This is the position of former Test umpire Don Oslear who declared therefore that

> As a consequence, the innings in progress at close of play on the final day was England's first innings. Therefore the real result of the match was not a 'victory' for England but a draw.[3]

Oslear was joined by at least two former Test umpires from Australia, Len King and Robin Bailhache in condemning the illegality of the 'declaration'. King referred to the action as a 'farce' and concurred with Oslear that it should not have been possible 'according to the letter of the law'.[4]

For others, in the majority it would appear, the agreement between the captains was cricket at its finest. This was not corruption. This was not tainted by a fundamental illegality. There was no absolute nullity contaminating Hussain's 'declaration'. Instead we must characterize the captains' agreement as competition in the best traditions of the spirit of the game. A result was, if not guaranteed, at least on the cards, but *the* result depended purely on England's ability to score the runs against a South African side bent on preventing them from doing so. In other words, there would be a real game of cricket in which, as Allan Hutchinson would put it, anything might go.

Christopher Martin-Jenkins declared that while there might be some room for 'legal' debate over the distinction between a 'forfeiture' (illegal) and a 'declaration' (legal), the two sides played a game of cricket, the fans saw a game of cricket, and the umpires rendered decisions within the context of a game of Test match cricket. He wrote:

> Traditional sportsmanship often seems to be under threat from the exaggerated aggression of those playing the game for increasingly high financial stakes. The events of yesterday can have only been good for the spirit of the game.[5]

He added

> Initiative and a sense of public responsibility triumphed over the kind of dog-in-the-manger attitude that sometimes gives cricket a bad name. The result was an unexpectedly tense, intense and downright thrilling conclusion to a Test match that had threatened to meander away meaninglessly.[6]

For another commentator, writing with the hyperbole often associated with cricket, the game was a triumph of the human spirit.

> In any case, cricket was treated respectfully by the captains. Nothing untoward occurred. No rubbish was sent down, nor any easy runs given away. They did the right thing. Nature cannot be allowed to dictate terms. Man is not so woefully short of imagination nor Test cricket so insufferably serious that a fair contest cannot be produced when time is tight.[7]

The captains acted in the spirit of the game, for which after all, they were responsible under the *Laws* in force. Law 42(1) stated

> The Captains are responsible at all times for ensuring that play is conducted within the spirit of the game as well as within the Laws.

Law 42(2) added that

> The Umpires are the sole judges of fair and unfair play.[8]

The umpires offered no apparent objection to the deal struck by the captains. Both sides played cricket and England emerged the winners of a tight match. Oslear insists on a close and literal reading of the 1980 *Laws* and the distinction between a declaration and a forfeiture. He and others like King and Bailhache, would argue that the captains' duty to uphold the spirit of the game must be limited and circumscribed by 'as well as within the Laws'. If Hussain had sent out his two opening batters, waited for the umpire to call 'play', and then declared before a ball was bowled, Oslear would have been happy that the *Laws* had been obeyed. Here the umpiring fraternity seems to be adopting a strict rule formalism which ignores any idea that in such circumstances the spirit of the game, obviously shared in these circumstances by almost everyone involved on the day, should have precedence over 'the letter of the law'. As former Australian bowler Geoff Lawson puts it, democracy in the widest sense must be the dominant interpretive norm for determining whether the 'declaration' was or was not 'cricket'.

> Oh, yes, the fans. What a wonderful way to remind us all that the game is not simply played for the players. Fortunately there are still leaders who think the game needs to be relevant to fans as we embark on the 21st century.

> ...
> Now Cronje and Hussain should be praised for their 'innovation', because it reminds us that the game belongs to its followers.[9]

We know from experience of the game of cricket that in many instances, the idea of the spirit of the game is meant not just to supplement the *grundnorm* of the *Laws* but to supersede the technical boundaries of the written regulatory provisions. Instead of an elitist and isolated view that umpires and players should always simply adhere to the formal text of the *Laws*, at some level at least this impulse to allow reference to the spirit of the game as an overarching interpretive norm, seeks to allow not just a greater feeling of democratic involvement in rule-making and rule-application, but to permit the game itself to adapt and grow to changing circumstances, according to the agreement and consent of the participants.

And the matter does not end there. According to the *Laws* of the 1980 *Code* in effect at the time,

> Any decision as to the correctness of the scores shall be the responsibility of the Umpires.[10]

The umpires, in raising no objection to the Hussain 'declaration' and in confirming the England victory, have arguably ratified the legality of the captain's action. Once the score has been approved by the umpires as an England victory, there is legally an England victory. The only way in which Oslear can be correct is if he is arguing that the action by Hussain was what lawyers in the civil law tradition would call an absolute nullity, something which we might call void *ab initio*. In such a case, even the decision of the umpires to confirm the score and the result would be unable to convert an illegal act into a legal one. But this depends not on a literal reading of a clear and unambiguous legal text but on an interpretation which gives supremacy to one legal text about when a declaration may be made over another text which grants power and authority over the score to the umpires alone. The question for resolution will not be decided by some reference to legal formalism or legal positivism since it can be decided only by interpretation. The texts and interpretive strategies and positions compete for preeminence here. The winner will be the most persuasive argument and the most persuasive argument will be determined by one's particular vision of the 'spirit of the game'. 'Cricket' in other words, will decide what 'cricket' is.

Finally, it is perhaps relevant, although in no way strictly binding as matter of the strict technical rules of statutory interpretation, to note that under the current *Laws*, Oslear could have no objections to Hussain's 'declaration' or 'forfeiture'. Law 14(2) now reads

> **Forfeiture of Innings**
> A captain may forfeit either of his side's innings. A forfeited innings shall be considered as a completed innings.

Again, this new legal position is not dispositive of the debate over the Centurion Park Test. One might argue that the subsequent legislative change supports Oslear's technical, formal reading of the provision of the 1980 *Code*. In other words, the change indicates that his interpretation of the old provisions was in fact correct and that the legislative body has acted to correct a position which gave rise to a situation in which, arguably, the spirit of the game, as embodied in the captains' agreement, came into conflict with the letter of the law and their duty thereto. On the other hand, one might equally assert that the position adopted by the majority of the people concerned, fans, umpires, players etc. that the decision to bat in only one innings by the England captain was, in fact and in law, appropriate. The subsequent change to the *Laws* could then be seen simply as a clarification by the legislature of a statutory ambiguity. Thus on these possibilities, all based on a reading of the *Laws of Cricket* themselves, Oslear was correct, partly correct, or incorrect, as would be anyone who adopted the view totally opposite to that of the former umpire.

Whatever the position one chooses here, the intriguing questions and techniques of legal interpretation briefly outlined demonstrate that even an argument over the *Laws* themselves cannot be solved unambiguously. When we add the complicating factor of the spirit of the game as a (potential) overriding interpretive referent, life, cricket and law all become intriguing and complex. Both Oslear and Martin-Jenkins are making arguments here about what we mean when we say 'cricket'. They are taking interpretive positions about how we go about defining the content of the game by making adjudicative decisions about the meaning of the law. But, for both, the stakes are not the very existence of the game, of cricket or of the law. They are each acting in good faith as Hutchinson would have it, respecting and acknowledging, while disagreeing with, competing claims to truth and legality. Martin-Jenkins might think that cricket would be the poorer if Oslear's legal formalism were to carry the day, but he would not think that we had stopped playing and watching cricket if the match were declared a draw based on Oslear's reading of the text. We would still almost certainly be talking and arguing about cricket and the law within the parameter of the shared understanding of the fundamental and defining characteristics of both cricket and the law.

Of course, because good faith adjudication takes place within only the limited confines of the contingent possibilities of what may or might happen, it is a limiting concept which has only temporary status at any given time and place. What the requirement of good faith does demand, however, is that whatever interpretation is offered or whatever application is suggested, it must result from a genuine effort to make sense of the rule in hand or to deploy law's argumentative resources in a conscientious way. Understood in this way, the requirement of good faith is more an issue of moral integrity than a matter of analytical accuracy; it is less about legal rightness than it is about political reasonableness.[11]

Allan Hutchinson and all those of us who might for better or for worse fall at some time or another into the non-foundationalist camp, would be proud of Nasser Hussain and Hansie Cronje. Here was a case of democratic rule-making

and adjudication in which the possibilities inherent in playing the game, anything might happen, clearly triumphed over those who would offer a narrow and formalist technical reading of the legal text and assert as an apparent epistemological certainty that a 'forfeiture' is not a 'declaration' and can never be one. Anything might and can happen when the players of the game, in good faith, construct a legal practice open to the contingencies of human existence. The Centurion Park Test was non-foundationalist legal practice at its best. Unless, of course, we can demonstrate the absence of good faith.

To 'prove' the assertion that the Centurion Park Test was played in and exemplifies the best spirit of the game or at least to argue for this interpretation in a persuasive and good faith manner, we must place this Test within its context as completely as we can. We must publicly declare our reasoning and our beliefs in order to meet the test (no pun intended) of good faith. We must here turn to the question of bribery, corruption and bad faith.

The world of cricket, from its very beginnings, has been mixed up with gambling and the possibility of corruption. Indeed, the *Laws of Cricket* may well have their origins in an attempt to give some certainty to the limits in which betting and gambling on games could occur. In the past few years, with the rise of global telecommunications, more and more international cricket, particularly of the one-day variety, and the existence of a sub-continental diaspora, allegations of bribery and corruption in cricket have come to the fore. The law, history, politics and other contingencies of cricket bribery and match-fixing allegations are complex and I will not go into them here.[12] It is sufficient for the purposes of playing the game at hand, and introducing the issues of legal theory and practice which inform this book, to note simply that Hansie Cronje was a crook. The King Commission in South Africa detailed his connections with illegal bookmakers and match-fixing. After his original declaration of complete innocence, Cronje admitted to receiving money from bookmakers to provide pre-match information, allegedly limited to weather forecasts, pitch conditions and possibly to the make up of his side.

Several aspects of the Cronje case are interesting for the development of an understanding of the vital and essential connections between cricket and law. The first brings us back to the Centurion Park Test match. As a result of ongoing revelations about Cronje's involvement in match-fixing a reexamination of the result from Pretoria is required. The idea that the match was played as the result of a democratic agreement between the captains and that it was in fact, 'good cricket' played in a state of the ludic interpretive triumph of possibilities, has now been replaced by the idea that the game was fixed by Cronje. In other words, he made a 'sporting declaration' not out of some dedication to 'playing the game' but because his bookmaker friends stood to make lots of money out of an entirely unexpected and unforeseeable England victory, or even out of a South African win, neither of which would have been possible if the normal course of a boring draw had eventuated.[13] In other words, a new, unexpected element can alter the context in which our moral, political and legal decision-making process occurs. History is, like all else, interpretation and interpretation

is contingent. This reinforces the idea that all judgement and all judgements occur in a contingent world. Anything might happen. A match which took place and was judged to be in the finest spirit of the game can now, in a matter of months, in a changing human, legal, political and moral landscape, become, 'not cricket'. An apparent apotheosis of good faith comes to epitomize the contingent possibility of bad faith.

Thus

> Defeat ended South Africa's unbeaten sequence of 14 Tests since Headingley 1998, and some traditionalists held up their hands in horror at the 'cheapening' of the five-day game. But most agreed, including match referee Barry Jarman and the travelling England supporters who had endured three miserable days without play, that Cronje's enterprise was to be applauded. What subsequently emerged at the King Commission hearing was that Cronje's initiative had been motivated by a Johannesburg bookmaker, Marlon Aronstam, who rewarded the South African captain with 53,000 rand (around £5,000) and a woman's leather jacket. As the odds favoured a draw, a win by either side was the most satisfactory result for the bookmakers.[14]

This brings me to a second point about Hansie Cronje's impact on current legal theory and practice. It has now emerged, although there is still some doubt about the exact circumstances of the events, that during a previous tour by South Africa to India, Cronje passed on an offer to his entire team from an illegal bookmaker for them to lose a game in return for a large sum of money, rumoured to be US$250,000. There are several elements of interpretive and jurisprudential significance here. There is the fact of bribery, and the possibility of mass corruption in the playing of the game. Of equal interpretive significance is the fact that three team meetings were apparently required before Cronje was told that the offer was rejected.[15]

Cronje approached several members of his side individually and then also apparently put the offer to the team as a whole.[16] A simple assertion of a good faith versus a bad faith test, the fundamental criterion for understanding what 'cricket' and 'law' should mean, will not, I fear, be of much assistance to us here. What the Cronje case, and the series of meetings involved before the South African team decided not to take a bribe to throw a match, indicate is that playing the game is always a problematic political, moral and legal issue. In effect, I think that the Hansie Cronje case again reaffirms the basic thrust of the argument in favour of interpretive and legal ambiguity by demonstrating the contingency of what it even means to play the game.

One of the central allegations in the current match-fixing imbroglio surrounds the bribery of players for so-called side betting. Here, the bettor does not wager on the outcome of the game, or even on the more familiar winning/losing margin or the spread. Instead, bets are placed on all aspects of the contingent occurrences within the playing of the game. Thus, one might bet that a particular batter will score fewer than 20 runs. If a player has been bribed, he might have chosen to

play a 'bad' shot after scoring 19 runs. Those watching, judging and playing will in all likelihood be unable to tell whether what happened was in fact simply a careless shot or a deliberate attempt to get out. The basic question posed by this sort of bad faith is whether one is still playing the game. How can we tell if bad faith is present when and if the formal aspects of rule adhesion appear to have been fulfilled?

Naturally one might begin by asserting here that the batter is not playing the game since he is participating in a conspiracy to score fewer than 20 runs. Playing the game requires the batter to do the best they can and to score as many runs as possible. But a fuller understanding of the complexities of the game will demonstrate that this is not a universally simple verifiable truth of what it means to play the game. A batter may get out for less than an optimum score for any number of reasons. They might be batting when the captain chooses to declare. They might have been instructed to pick up the scoring rate and as a result have played a shot they might otherwise not have attempted. They might have believed the umpire made a mistake in a prior decision to give them not out, and as a result have played a shot deliberately intended to right that wrong by giving up their wicket. Many would view this last example not as 'not playing the game' but rather as the actual embodiment of playing the game in true adherence to the spirit and best traditions of cricket. The possibilities are endless, anything might happen. And any of those things would still be cricket. The batter would still be playing the game. Good faith and bad faith have become not bright lines of adjudicative demarcation but rather never-fixed points of reference about what it means to talk about playing the game, and about making legal decisions.[17] Two other examples embody the complexities of our understandings of the law and ethics of 'bad faith' and 'cricket'.

In the World Cup in 1999, for example, Australia deliberately slowed down the run rate in a game against the West Indies in an attempt, under the rules and mathematical calculations in force during the tournament, to prevent New Zealand from advancing to the next stage. Australia had a history of exploiting legal technicalities against New Zealand. The 'underarm bowling' controversy has informed legal and cricket relations between the two countries for decades.[18] Many observers saw this as a yet another cynical attempt, in the great Australian tradition, to use legal formalism in the ethics-less search for victory which for them characterizes Australian cricket.[19] Rule formalism, while not in the spirit of the game, is nonetheless still 'cricket' in the strict sense. In 2002, New Zealand and South Africa used the mathematics of run rates and victory margins under the bonus point system to deny the home side a place in the finals of the triangular One-Day International series played in Australia.[20] In each case we find international cricket captains instructing their players not to score more runs, or to score them more slowly, in order to achieve a result not in the game being played but in relation to other considerations, such as who the opponent would be in the finals. Quite clearly there is some understanding that this is close to, but probably does not constitute, 'collusion' or 'match-fixing', even though it is 'not cricket'.[21] At the same time however,

the actions by New Zealand captain Stephen Fleming were passed under the legal and ethical microscope. Some in his own country accused him of cheating and indeed of 'match-fixing'. He was charged by his critics with violating the captain's duty to uphold the spirit of the game at all times and with a breach of Para. C, Section 10 of the *ICC Code of Conduct*, in other words, match-fixing. Under the post-Malik and post-Cronje legal regime, match-fixing comes with a life ban from the game.

By focusing on the bonus point question and determining that his team's chances of making the final would be enhanced, if not guaranteed, by permitting the other side, South Africa, to win, Fleming was alleged to have been a party to 'contriving or attempting to contrive the result of any match'.[22] If indeed there was an order to lose the game, we must be very close to the point at which what is going on is in violation of both the spirit and the *Laws* of the game. If sides are trying to lose, can they be said to be playing cricket in good faith? Does the phrase 'playing cricket in good faith' contain a redundancy? In other words, in the absence of good faith, is one still playing 'cricket'? Yet, the result was allowed to stand, Stephen Fleming was not disciplined, let alone banned for life as provided under the *Code of Conduct*. Everyone agreed to disagree but everyone agreed that what happened was 'not cricket', but of course, it was still cricket. The bonus point system which rewarded larger margins of victory was thought to be at fault since it was open to manipulation and distortion. The exploitation of the rules in a ruthless fashion, even when that involves not trying to win, or to score runs when batting, is still, after the World Cup and New Zealand/South Africa cases, playing the game of cricket. The only question here, and this must always be the case, seems to be one of where the line between playing and not playing the game of cricket is to be drawn. The answer appears to be up for grabs. If not trying to win, or even trying to lose can be part of playing the game, just what is 'cricket'?

If we can now return to our understanding and interpretation of Hansie Cronje's offer of US$250,000 to his teammates to lose in India, we might simply see what happened as a series of democratic conversations about what it meant to them to play (or not) the game. Anything might go. For example, the game's administrators and sponsors are subject to ongoing criticism about heavy playing schedules and particularly about the frequency of often 'meaningless' One-Day Internationals. In fact, this is part of the actual context in which the South Africans might have come to discuss the offer relayed by Cronje. If the players decided that a particular game was in fact for them meaningless, then one might, however tentatively at this point, argue that 'not' playing the game by accepting the bribe, was little more than industrial action through self-help by disgruntled workers.

Again, however, this leaves out of the calculation many relevant contingencies which would have to be brought to bear for any complete understanding of what happened, not the least of which would be Cronje's base and basic greed and dishonesty. Imagine for now that the South African team had all decided to take up the bookmaker's offer and throw the game. I assume that they would have

had to do so while still giving the appearance of playing the game. Would we spectators and the players on the opposing side, as well as the umpires, have witnessed and participated in a game of cricket? Would we know? Is that important? What if only seven players had agreed, would the other four have been playing a different game? Is this a Platonic problem of shadows in the judicial and adjudicative cave called 'playing the game' or is it an Aristotelian game which is no longer a game, or is it another game? Just what are we and they playing at here? Is a fixed cricket match still a cricket match? Is good faith simply a way of making rules about making rules in a matrix of contingency spiralling away from us at all times?

During the infamous Bodyline series, the Australian captain, Bill Woodfull, famously said to the English team manager at the end of a bitter day's play:

> Of two teams out there, one is playing cricket, the other is making no effort to play the game of cricket.[23]

What would Hansie Cronje have made of such a conversation? Could he have been a good faith participant in the collective dialogue about the politics of law and cricket? Was he a good cricketer? Was he a cricketer only part of the time? Or was he a cricketer at all?

Bribery and corruption strike at the heart of any good faith adjudicative process. In essence, the game, or some part of it, is fixed, the result pre-determined, an unfair advantage obtained, the very process of judging tainted and changed. Naturally enough though, in a contingent and nonfoundationalist account, all these statements would have to be subjected to political and analytical scrutiny, contextualized and deconstructed. Is a bribed judge, for example, ever still a judge? Does proof of corruption in the judicial process offer *per se* proof that the outcome was 'wrong'? A guilty accused may be convicted as the result of bribery or police corruption. The 'conviction' is tainted in so far as we consider the process essential to the outcome. But this does not mean in a practical sense that the accused did not commit the crime. These questions have of course always troubled our understanding of judicial bribery and police corruption.[24]

They also now trouble our understanding of cricket and of adjudication within the game and about the game. Several international umpires have reported having been approached by bookmakers to supply information which might have led to match-fixing.[25] More serious accusations have been levied against Pakistani umpire Javed Akhtar. Some have alleged that his seven LBW decisions against South Africa in a Test against England in 1998 may have been the result not of a calculated application of the intricacies of Law 36 to the merits of each delivery, but instead have been 'bought' by bookmakers.[26] The allegations against one umpire are serious and troubling enough, but when combined with doubts about the integrity of past and future results and performances, they give rise to fundamental questions about what we mean when we speak or write about 'cricket' and even 'law'. Doubts about every match in which Cronje captained South Africa are now part of the interpretive context.[27] Every dropped catch or soft

dismissal, once put down to inattentiveness, laziness in stroke play, tiredness, mental lapse etc., are now placed in the match-fixing context. Every questionable LBW decision is fraught with even more doubt than usual.

Some have proposed that we might purge cricket of this taint by eliminating those convicted of match-fixing, like Salim Malik or Hansie Cronje, from the record books. Of course, the suggestion was quickly dismissed first on epistemological and taxonomical grounds i.e. there really are no records kept by an official body. *Wisden*, the sacred text of cricket, is a private undertaking. The 'Bible' of the game is not an 'official' text. Any expunging of Malik, Cronje or Mohammed Azharuddin from *Wisden* would not have been an official sanction or officially sanctioned. The move to remove them was also dismissed because of the forensic impossibility inherent in any such project. If Hansie Cronje is eliminated because he is a cheat, does that mean that every bowler who dismissed him, or every fielder who took a catch from his batting or every batter who scored runs from his bowling, must also lose that part of their own history?[28] When Cronje was killed in a plane crash in South Africa in June 2002, similar debate and controversy surrounded the appropriate place and function of history and memory in our understanding of 'cricket'. Should/would he be mourned as one of South Africa's great players and captains or as an unrepentant cheat and a disgrace who brought shame to his country and himself?[29]

This encapsulates the interpretive, legal and ethical dilemma imposed on us by the bribery and match-fixing scandals. Doubt is magnified to such an extent that we no longer appear to know with any practical certainty where the boundary between good and bad faith is to be found. We struggle for moral, ethical, legal and historical certainty when all we can find is complexity and plasticity. 'It's not cricket' may now come to refer not to some vague, unarticulated but nevertheless understandable ideal of the spirit of the game, but to a more basic epistemological and jurisprudential dilemma. If we cannot know whether any or all of the players or umpires are actually playing cricket, even if they appear to be engaged in that activity, how are we to know or decide anything? If the police manufacture evidence and perjure themselves, how can we believe in the criminal justice system? Yet, in the end, the game of law, just like the game of cricket, goes on. I agree with Mike Marqusee when he writes about the cure for cricket corruption: 'Only in the democratic domain, where cricket and its meanings are shared and shaped by multitudes, can there arise a force strong enough to override the manipulations of the elite.'[30]

I agree with Allan Hutchinson again that: '(Good faith) is more an issue of moral integrity than of analytical accuracy . . .'.[31]

In the end, cricket can only save itself if it is a democratic exercise in law-making by all participants – players, umpires, administrators and fans. The same can be said about law more generally. Just because Hansie Cronje did not play the game does not mean, nor could it ever mean, that the game is not being or cannot be played. That is for us to decide. Just because some police lie, that does not mean that law does not exist, or even that innocent parties have been convicted. That is for us to decide on the basis of other, democratically derived

criteria. What follows is my attempt to indicate some of the areas in which we have constructed, and should continue to construct cricket and law, and the *Laws of Cricket*, through interpretive disagreement, compromise, growth and uncertainty. More significantly, I hope, what follows goes some way to demonstrate that the strength, for better or worse, of both cricket and law, can be said to be centred in the very interpretive ambiguity which is inherent in each.

2 The legal theory of cricket

Much of what passes for legal scholarship these days continues to be, quite simply, boring. More important, however, than its distinct lack of aesthetic appeal, is its continuing irrelevance. Not only are esoteric debates about the niceties of the rules of frustration in contract, or about the technical meaning of some obscure wording in an even more obscure legal instrument, irrelevant because they are of interest only to a small minority of lawyers and judges, who constitute an even smaller minority of the populace, but they are irrelevant at a more fundamental level. People, I believe, learn more about law through the mediating effects of popular culture than they ever will through the dull and long ponderings of judges or legal academics on the arcana of taxation or contract law.

There is a strong and growing tradition of exploring the links between law and popular culture in American legal scholarship, to which British legal academics and others are slowly awakening. This is due not so much to any innate superiority of things American but rather because American legal academics have learned a basic truth about the real world. As Stewart Macaulay puts it:

> There is an official law, but there are complementary, overlapping, and conflicting private legal systems as well. School, TV and film, and spectator sports offer versions of law that differ from that found in law schools. They also offer alternative resources from which people fashion their own understandings of what is necessary, acceptable and just.[1]

The lesson we can learn by expanding the parameter of 'legal' scholarship is a simple one. Law and popular culture come together in a dialogic operation. We learn about law through popular culture and, if we look hard enough, we learn about popular culture through law. More importantly, however, and more fundamentally, we learn and transmit pieces of knowledge through all our social practices. These practices, from sport to law, are really stories we tell ourselves about ourselves. They offer a complex narrative mythology through which our mutual understandings and misunderstandings are mediated. These messages from our daily lives are not, as many legal scholars and judges would have us believe, divided into strictly distinct and segregated epistemological or phenomenological categories. In reality we freely translate and transmute understandings from one

'part' of our lives to other 'parts' of our existence, both individual and collective, on an ongoing basis. These parts of our lives are not, as some jurisprudential traditionalists would have it, divided into an immutable hierarchy which privileges law and devalues other aspects of our existence.

When Stanley Fish wants to emphasize his views on the futility of legal or literary 'theory', for example, he offers not an analysis of Nietzsche, Gadamer or Derrida, but a description of a conversation between a baseball pitcher and his manager.[2] The point Fish misses, or perhaps more accurately, glosses over, is the complexity of the practices he describes, that is playing baseball and talking about baseball. He appears to assume that each takes place in an environment of mutual understanding between and among the members of the interpretive community. The point I want to emphasize in this book is that even between members of the same interpretive community, the level of mutuality is sometimes overestimated. This does not necessarily mean that we lack a shared understanding of the story we tell when we play or write about cricket, but rather that part of our shared understanding is our knowledge of our *lack* of understanding as well as our comprehension that we can and do live with complexity and contradiction.

If Americans can appeal to the imagery and shared values of their culture through the common experience of 'the national pastime', many in England and other parts of the former Empire, can draw information and inspiration from the 'greatest of games' – cricket.[3] In cricket, we find all that baseball can offer legal academics and more. Cricket does not have 'rules', it has 'laws'; umpires are vested with jurisdiction only upon 'appeal' – the list of analogies and parallels between the sport and the legal system is long. More than the obvious, however, comes from cricket, for it is a game full of blatant and co-existing contradictions – the public and the private,[4] the individual and the team,[5] the spirit of the game and a strict application of the laws.[6] This book is an attempt to make this part of legal scholarship less boring and more relevant. It seeks to tell a story about ourselves and our culture and about the ways in which we go about the construction and deconstruction of social meanings through our experiences of the apparently distinct social texts we call law and cricket. In the words of Steve Redhead, it is time to take law and popular culture seriously and there is nothing more serious than cricket.[7]

A brief set of examples will illustrate the applicability of such analyses to the world of playing cricket, talking about cricket and law teachers writing about cricket. The world of grammar and understanding in various sporting sub-communities is both highly specialized and subtle. Thus, we all 'know' what 'a ball pitched just short of a good length' means, just as lawyers 'know' what 'the damage was clearly foreseeable' means. Yet our knowledge of the meaning of these phrases is highly contextualized. In other words, some phrases mean one thing when defined 'literally', yet mean something else when they occur in some other context. We are able, when discussing or analyzing a cricket contest, to realize that the phrase 'just short of a good length' can depend on the nature of the pitch, the speed and bounce of a particular bowler, where the batter takes guard etc. Because we 'belong' to that context or interpretive community, we can

distinguish between and among such cases and imbue phrases with the 'correct' meaning.

It is not unusual, for example, especially when the England team are playing, that they are criticized for failing to win. This failure can be variously attributed to (1) gutless, stupid, conservative captaincy, (2) a general lack of team fighting spirit, often compared unfavourably to the ruthless Australian ethos, (3) the players' lack of skill at critical points in the match and (4) the fact that they no longer 'know how to win'.

The factor 'knowing how to win' is one which all participants in the hermeneutic community which 'understands' or 'knows' cricket, comprehend, just as we all know about a ball pitching just short of a good length. Similarly 'to know how to win' is not, for example, to be taken literally. We do not believe that Michael Vaughan does not understand the *Laws of Cricket* which would require him to score more runs than the other side and dismiss them twice. Nor do we believe that 'knowing how to win' is simply shorthand for (1), (2) or (3), although it may include parts of each of these. We 'know' that you have to 'know how to win', that some captains (for example Bill Lawry of Australia) 'do not know how to win', that others, e.g. Steve Waugh, almost innately 'know how to win'. We also know, for example, that you may indeed have to lose 'to know how to win', although that is not necessarily the case where England are concerned.

We can imbue the phrase with even more subtlety, if we choose. Several years ago, Allan Border's Australian team performed very poorly. Border was criticized for his captaincy – he did not know how to win. Through the process of losing, however, he built the early nucleus of a team which was passed on to Mark Taylor and then to Steve Waugh, and Australia lead the Test match table in the world rankings. Steve Waugh and Ricky Ponting, like most Australians if English commentators are to be believed, knows how to win, how to put the boot on the throat of the opposition to press home the advantage. What was a sign of weakness of character – playing in Border's team with its early losing form, has become, in retrospect, a character building exercise – he 'learned how to win' by losing.

It would even appear that one can 'know how to lose'. When David Gower as England captain lost the Ashes to Australia, he was criticized in a brutal fashion for his team's failure and his lack of leadership. Graham Gooch, on the other hand, later returned from a losing Ashes tour to Australia with his captaincy intact and even enhanced. Similarly, the present England team returns from series defeat after series defeat but with its reputation relatively intact. At the same time, Mark Taylor and then Steve Waugh lead some of the best Test sides in modern history to Ashes wins, triumphs over the West Indies etc., only to have their very place in the side called into question. Even 'knowing how to win' may not be enough. The factors which underlie all of these analyses are incredibly complex and will be addressed, in part at least, in the following sections of this work. What is important to bear in mind is the apparently simplistic message that a phrase like 'to know how to win' encapsulates and embodies a whole complex web of meaning, yet we understand such a phrase because we belong to the correct interpretive community.[8]

Critics of the approach to legal scholarship which I adopt in this book operate from their own epistemological starting point, that 'law' is separate and distinct from all else in society. For them, law is, however imperfect in practice, a science. As a process, law, and especially adjudication, is meant to uncover a strict meaning, a truth. All acts of judging consist simply of the performance of a certain, clear autonomous and established methodology which guarantees the uncovering of a true, 'legal' solution to a given problem.

Such a world-view is, in my experience, and as any cricketer will tell you, blatantly false and counter-experiential. We live in a world where every aspect of our lives is connected in a vast web of shared history and culture. The lived experience of law shows historical shifts in meaning as the 'truth' of a given legal text (for example a Constitution, the *Laws of Cricket*) is adapted to suit changing conditions. It is in the ever-shifting yet apparently established nature of the meaning of legal texts that we can discover the first connection between law, cricket and the meaning of life.

The act of interpretation is not, as the traditionalists would have it, an isolated, scientific inquiry into the one 'real' or 'true' meaning about what is a 'declaration' versus what is a 'forfeiture'. Rather, it is, a process of interaction wherein the reader or interpreter engages the text in an act of 'play' (*spiel*).[9] As Allan Hutchinson argues, it is indeed all in the game. 'Law' is 'play'. From the other end of the problem, moreover, 'play' is law, for 'play' is more than mere 'fun and games', more than mere exercise.

> It is a *significant* function – that is to say, there is some sense to it. In play there is something 'at play' which transcends the immediate needs of life and imparts meaning to the action. All play means something.[10]

Just as 'law' is 'play', 'play' is 'law', for both revolve around a *signifying, meaningful* activity, bound by rules, yet 'free' both inside and outside those rules. As every case is decided on its facts, on its own merits within the flexibility of the doctrine of *stare decisis*, each cricket match is different from every other ever played, although guided and bound by the same *Laws*. Each question of a cross-examination is separate and distinct from every other question, bound as to its relevance and admissibility by all existing rules of evidence. At the same time, each question of a 'good' cross-examination is connected with all other questions not only of that witness but of all previous witnesses and of those to follow. In a similar fashion, every ball of an over is independent, judged on the merits of line and length and the success or failure of the batter. Again, at the same time, we all know that each ball is intimately connected with the other five of the over. Consecutive outswingers determine the conditions for the effectiveness of a subsequent inswinger. Four overs of constant line and length determine the success of a bouncer or a yorker. Five leg breaks determine, in addition to the skill of the sixth delivery itself, whether the wrong 'un, googly or topspinner will have the desired effect. Each ball, like each question put to the witness, has a life of its own and its 'truth' depends on its individual merit. At the same time, 'merit' and

'truth' are connected in a very fundamental way to all that precedes or follows an 'individual' moment, question or ball.

Each question is part of a cross-examination, each cross-examination is part of a case, each case part of an attempt to win, to demonstrate the merit and truth of one party's vision. Each ball is part of an over, each over part of an innings, each innings part of a match, an attempt to demonstrate the merit and truth of one side's 'cricket'.

Thus, each and every part of a trial, a law school course, or a cricket match, is at once bound *and* free, independent *and* connected. Between the apparently dichotomous opposites, a complex narrative occurs. The story of law, legal education and cricket depends for its content and meaning on our decisions about what to remember, underline, exclude or elevate in our reading of the particular text and all other social texts of which it is a part.

In so far as cricket is concerned, under one traditional alternative analysis, we must be aware that cricket has become commodified, that it is a tool of the mass media meant to expose consumer goods for our delight, that its ideological function is to perpetuate ideals of competitiveness and the dominant division of labour. More specifically, the popularity and canonization of the likes of Don Bradman as a batter was, in this view of the world, intimately connected to the broader acceptance in Australian society of the values of capitalism. In the Bradman era, batting and the accumulation of large totals was seen to reflect the associated values of capitalism.

While there can be no doubt that we must situate any activity (sport, cricket or law) in its current social and historical context in order to properly understand its nature and function, these critiques and analyses of sport and of cricket in particular, fail to conceive of the key ideas of context or history in a contextual or historical fashion. As E.P. Thompson puts it, in such discussions, 'the conceptual structure hangs above and dominates social being'.[11] In other words, these analyses fail to recognize the 'whole' truth about cricket and falsely conflate partial facts to a status of totality. They picture capitalist society as a complete hegemonic unity, in which *all* meaning is attributed in a uni-dimensional way. Thus, Don Bradman becomes nothing more than a symbol of capitalist drives to accumulation. All else, his talent, artistry and the collective attachment which all who know cricket feel when his name is mentioned, is but a mask for the brutal reality of 'the system'.

Yet to define and describe cricket and the accumulation of runs as prototypically capitalist is to tell only half the story, for capitalism, even in its Victorian zenith, was not a cultural monolith. Nor is it today.[12] Cricket, as the epitome of capitalism, has always carried within it apparently unresolved and irresolvable contradictions. Even in the paradigmatic W.G. Grace we find the conflict of cricket as 'a violent battle played like a genteel, ritualized garden party' as well as the conflict between 'a new profession' and a game 'practised as if it was a pastime'.[13]

What makes cricket so fascinating as a cultural phenomenon and so similar to law as a social practice, is not its monolithic and one-dimensional connection to

the mode of production, but rather the fact that is at once inside *and* outside the mode of production, that it affirms and denies capitalist values, that it is anarchic and governed by *Laws*; that is a team sport dominated by a fascination with individual performances; that it is a bourgeois game dominated in many ways by a proletarian practice; that it is governed by *Laws* which are often supplanted in practice by higher ethical conventional norms; that it is the epitome of British imperialism and colonialism and has in many instances been a driving force for colonial national freedom struggles in places like India and the West Indies. It operates, as does law, at many levels, through multiplicitous contradictions and somehow, inspite of this, it continues to thrive. Indeed it might be argued that cricket, like law, is a system of normativity which thrives and grows because of the contradictions which create it.

Cricket is the 'romantic paradox' wherein N.R. Perera of Sri Lanka can be more proud of his presidency of the Board of Control for Cricket in that country than he was of his function within the Marxist revolutionary movement. It is the fundamental contradiction of the introductory chapter of C.L.R. James' *Beyond a Boundary*, where we meet Matthew Bondman, an entirely unacceptable and disreputable citizen who shone and found social recognition as a batter;[14] it is the contradiction between C.L.R. James, advocate of West Indian independence, Trotskyite Victorian out of his time, and C.L.R. James, the greatest cricket writer of all time; it is the contradiction of reserved, staid, upper-class cricket and Ian Botham as 'the first rock'n' roll cricketer'.[15] (Just as 'law' is a means of social emancipation from a 'legal' regime of slavery, and 'rights' are the means of modern racial emancipation and, at the same time, the means which, in some analyses, keeps them from real freedom.) It is to these fundamental contradictions of our experiences of law and cricket that I now turn.

3 Lord Denning, cricket, law and the meaning of life

In the most well-known case of cricket and the law, *Miller v. Jackson*,[1] Lord Denning waxes eloquent on the importance of cricket in the meaning of life.

> In summertime village cricket is the delight of everyone. Nearly every village has its own cricket field where the young men play and the old men watch. In the village of Lintz in County Durham, they have their own ground, where they have played these last 70 years. They tend it well. The cricket area is well rolled and mown. The outfield is kept short. It has a good club house for the players and seats for the onlookers. They belong to a league, competing with the neighbouring villages. On other evenings after work they practise while the light lasts. Yet now after these 70 years a judge of the High Court has ordered that they must not play there any more. He has issued an injunction to stop them. He has done it at the instance of a newcomer who is no lover of cricket. This newcomer has built, or has had built for him, a house on the edge of the cricket ground which four years ago was a field where cattle grazed. The animals did not mind the cricket.
>
> ...
>
> And the judge, much against his will, has felt that he must order the cricket club to be stopped: with the consequence, I suppose, that the Lintz Cricket Club will disappear. The cricket ground will be turned to some other use. I expect for more houses or a factory. The young men will turn to other things instead of cricket. The whole village will be much poorer. And all this because of a newcomer who has bought a house there next to the cricket ground.[2]

For Lord Denning, the issue is clear, the consequences dangerous.

> There is a contest here between the interest of the public at large; and the interest of a private individual. The *public* interest lies in protecting the environment by preserving our playing fields in the face of mounting development, and by enabling our youth to enjoy all the benefits of outdoor games, such as cricket and football. The private interest lies in securing the privacy of his home and garden without intrusion or interference by any-one.[3]

Lord Denning, in the text of his judgment in *Miller v. Jackson*, offers us a legal reading of a *social* text, cricket. He urges up, calls upon, invokes images and meanings which are meant to confirm or instil in us, the readers, a vision or interpretation of the text which leaves us with an unmistakable, incontrovertible *meaning*. The dominant imagery which Denning invokes, is, of course, the power and majesty of village cricket. Village cricket is, for Denning, and for the readers who get the message, as we must, quintessentially English.[4] It is more than the sum total of its parts, for cricket is, after all, only a game. But for the reader of the Denning text who is pulled along, the image and meaning of village cricket is much more. It instills, as does Denning's rhetorical flourish, a sense of nostalgia and wonder at the purity and joy of it all. As Mary Mitford put it, 150 years before the tragedy of the Lintz cricket ground: 'Who would think that a little bit of leather, and two pieces of wood, had such a delightful and delighting power!'[5]

Each image employed by Denning is meant for us to consume and interpret in one way, and one way only. For Denning, there is *Truth* and Truth is the essence of cricket. For him, 'village cricket is the delight of everyone'. Cricket is a norm, a universally accepted social practice. It is a way of being-in-the-world which has meaning for us all. As the 'rule of law' is a generally recognized social norm, embodying values which are 'good', so too is 'village cricket'. As the legal system is divided among judges, solicitors, barristers, clerks, secretaries, clients, witnesses, police, so is cricket a universal divided into particular elements or sub-groups, each of which is essential to the constitution of the whole.

'The young men play and old men watch.' There is, for Denning, no hierarchy or division. The players, the young men, are in no way superior to 'the old men' who watch. It is a social endeavour, a social text, democracy embodied at the local level. Without one, the other would be incomplete and 'cricket' would not exist. 'Cricket' is watched *and* played, together, at the same time, one activity complementing the other and together constituting the complete text, 'cricket'. Unfortunately, we must remain ignorant of the fate of the other half of the local population. The 'women', young or old, it would seem, have nothing to do with cricket. They neither watch nor play. Universality in the construction of the good life in democracy is in reality far less than universal.

Like law, cricket for Denning, has dignity, stability and age. The cricket ground is a place 'where they have played these last 70 years'. Like other English social institutions, it must be carefully guarded by all who participate, it must be 'tended', 'well rolled and mown'. It is as English as the country garden, the same techniques apply, the same functions are served.[6] The physical facilities, like the game itself, are for all – 'a good club house for the players and seats for the onlookers'. Perhaps the women have a place inside the club house, preparing the meals for the players.

It is a temporal pastime, fixtures taking place on weekends, practice in the evenings, all away from the normal grind of employment or work. Cricket involves everyone for the joy of the game, not for remuneration. It is a social activity distanced by time and space from the means of production. It is healthy

4 Dante, cricket, law and the meaning of life

If Lord Denning's invocation of the heavenly nature of cricket in English society represents one side of a social text, Simon Barnes' description of Dante's ideal of cricket hell, represents the other side of the coin.[1]

> Here are all the cricketers the world will long despise:
> The chuckers and the sledgers, all the men who cheat,
> Batsmen who refuse to walk, fielders who tell lies,
> Bowlers who make false appeals, those who, just to beat,
> Their foe, will bend or break the custom and the law.[2]

In cricket hell, we find those who would denounce all that Lord Denning holds dear. We find what Simon Rae has recently described as the 'history of skullduggery, sharp practice and downright cheating in the noble game'.[3] They are the cricketers who cheat by making an illegal delivery (chucking) or by distracting their opponents through taunts and jeers (sledgers). They are the cricketers who would deny the truth by refusing to leave the batting crease when they know they have snicked the ball and been caught (refuse to walk). They are the cricketers who deny the truth by claiming to have taken a catch which touched the ground (fielders who tell lies). They are cricketers who attempt to trick or intimidate an umpire into an incorrect decision in their favour (bowlers and fielders who make false appeals). They are cricketers who have rejected the ethos of the game, who have denounced the communal nature of 'friendly competition' and who have adopted the values of winning at all costs ('those who just to beat their foe, will bend or break the custom and the law').

These cricketers have been condemned to hell for the ultimate sin of committing acts which 'just aren't cricket'. Like a crooked judge or a bent copper, they must be treated even more harshly than their 'civilian' counterparts because they have betrayed a fundamental trust which 'we' who know the *truth* of law and of cricket have placed in them. Worse than the 'newcomer' of *Miller v. Jackson*, they have betrayed their own; they are traitors who pretend loyalty to cricket and truth while serving Mammon and falsehood. Like Hansie Cronje, more than the Other, more than any outsider, these are in reality the enemy within. In appearance they share our hermeneutic and ethical understandings of 'cricket' yet they

Further interpretive difficulties also arise here. There is imposed upon the captain a clear and apparently unequivocal duty to ensure compliance with both the traditions and spirit of the game on the one hand, and the *Laws of Cricket* on the other. It seems clear then, from what we 'know' of cricket, that the reference to the *Laws* here has two distinct purposes. First, the issue of incorporation, express or by implication, is problematic and/or irrelevant here. The captain has a clearly defined duty to both, 'as well as' is the language employed by the legislature here. If they were identical through incorporation or otherwise, such a phrase would be redundant, and a basic rule of interpretation is that the author/legislator intends to give meaning to all words in the text.

Secondly, we proceed on the idea that there is still, within the context of the *Laws* themselves, a difference in form and content between the spirit, and ethics of cricket on the one hand, and the literal, technical meaning of the legislative set of *Laws* on the other. There must then be some form of ordering, unless we believe that there can never be a conflict between the *Laws* and the spirit of the game. If there is no conflict then the captain will have no real difficulty in ensuring compliance with both norms. If on the other hand, there is a conflict between the *Laws* and the spirit of the game, then it will be impossible literally and in practice to ensure compliance with the captains' duties as embodiment of the Law, the *Laws* and the spirit of the game. Indeed, much of the rest of this book is dedicated to the idea that one of the things which makes cricket such a great game and such a fertile field of study for lawyers, is that it often poses precisely the apparently stark distinction between strict, formal, literal or positivistic rule-compliance and the obligations imposed by a higher ethical duty. Thus, the provisions of Law 42(1) do little if anything to answer the basic jurisprudential questions of cricket and the law – (a) do we obey the law?; or (b) do we obey the spirit of the game; or finally (c) in acting according to (a), do we violate our duties under (b)?

Finally, a further set of jurisprudential and practical questions is posed by the provisions of the new *Laws of Cricket* and the incorporation of a text which seeks to articulate in part at least the content of the spirit of the game. Umpires must ensure fair play, including preventing players 'behaving in a manner which might bring the game into disrepute' (Article 1 and Law 42(18)). We know again from Article 4 of the *Preamble* that the spirit of the game, in upper case letters, includes respect for 'the game's traditional values'. We also know from Article 5 that one violates the spirit of the game by indulging 'in cheating or any sharp practice' 'for instance' etc. We also know again, that the umpire may intervene under Law 42(2) in relation 'to an action not covered by the Laws'.

Here, briefly are the matters of concern. Law 42(1) requires that the captain ensure compliance with the spirit of the game 'as described in The Preamble'. This presents no, or fewer, difficulties when we are dealing with conduct which is clearly defined and proscribed. Indeed, at first blush one might think that this means simply that the *Preamble* completely codifies the content of the spirit of the game. However, a simple reiteration of the legislative language of the text in question reveals that the captain must ensure compliance with actions which

Again, one might agree or disagree with Benaud's position, for any number of reasons. However, it seems clear that there is an arguable position being put forward that this type of action could easily be seen to fit within the 'definition' of bringing the game into disrepute. If this is so, then of course, exactly the same interpretive issues which arise concerning the consequences of an overly aggressive appeal again come to the fore. What is equally evident is that the contextual complexity and genius of cricket and cricketers again comes to the fore to defeat any attempt to codify the game and its *Laws*. 'Aggressive appeals' by charging the umpire are replaced by what one might call passive appeals by ignoring the umpire. Each or both or neither might arguably be contrary to the spirit of the game. Legislative intervention may or may not be an answer but it can never be *the* answer. Cricket is and has always been understood as complexity and uncertainty within law and *Laws*. It is this complexity, this uncertainty within law and adjudication, which make cricket the game that fascinates and annoys.

Finally, by way of introduction to issues to which I shall return later, it might be added that a further possibility remains. Nothing in either position or any variant thereof about the nature of appeals and the spirit of the game or the sanctions to be attached to a violation of the traditions of cricket in these circumstances would prevent the batter caught in such cases from voluntarily surrendering his wicket.

Thus under Law 27(1) and (2) a batter 'who is out under any of the Laws' may leave his wicket without any appeal having been made and that batter is considered to be 'dismissed'. Again one might argue that a batter might be prevented from doing so if the combined result of the provisions of Law 23 relating to when a ball is dead would mean that he has therefore not been 'dismissed' under the *Laws* at the time he leaves his wicket. A leading commentary on the *Laws* exposes the apparently uncomplicated position that under the new *Code* there is a clear distinction between a batter who is 'out' and a batter who is 'dismissed'.

> Being out means that the conditions of the appropriate Law apply. Being dismissed means that an umpire has given him out, or he has given himself out by walking from his wicket.[10]

This positivist distinction between the fulfilling of objective conditions (out) and judicial intervention (dismissed), does not however answer the question as to when the objective 'conditions of the appropriate Law apply'. This will always be a matter of some interpretive intervention and often debate. Indeed, the issue under discussion here is but one example. If the ball is 'dead' the batter who edges a catch to a fielder or who is struck on the pads cannot be either 'out' or 'dismissed', since the ball is not in play.

Law 23 is clear in listing when a ball is dead and what many of the consequences of a call and signal of dead ball are. However, it does not clearly establish the basic jurisprudential point which is central for any determination under the circumstances under discussion, i.e. is the ball 'dead' *per se* or is the ball 'dead'

similar except that, for the sake of the example, we assume that the fielding side knows the ball did not hit the bat.

At this level then, the appeal is without merit. It is motivated in large part by feelings of injustice and revenge. The umpire gives the decision in favour of the fielding side. Is the batter 'out'? He is 'dismissed' if and when the umpire upholds the appeal. Has justice been served, even if law has not? Clearly arguments will circulate here within the interpretive community about rule formalism, balancing out and the karma of the game, about conspiracy and about justice versus the individual merits of every adjudicative act. Some will see justice and the best interests of cricket while others will see conspiracy, injustice and a violation of the spirit of the game. Epistemological certainty might be replaced by democratic dispute and disagreement. Very little can be certain, even whether we are indeed talking about the same thing.

Once we get over the epistemological and deontological hurdles we will always encounter in such debates about law-making and judicial interpretation, we can then begin to confront the next level of debate about the appropriate and best measures to be invoked to deal with the 'problem' as we have agreed to define it. Are the issues raised by this and other questions about the current state of the game and about the rule of law and increasing criminality and lawlessness better dealt with through more law or through more democratic, or some would argue, republican rule-making activities?[3]

Umpire Bucknor speaks in favour of a combined effort. He sees his role as umpire to encompass a duty to maintain the 'system'; to keep the players from 'beating' it. At the same time, he makes it clear that a major focus in ensuring the survival of the game, both at the level of the *Laws* and the spirit of the sport, must be in the individual conscience of the wicketkeeper. He urges an ethical solution from individual cricketers who will in some way see the light and realize the error of their ways. This would be in keeping with at least one type of understanding of the participatory rule-making, rule-creation and democratic building of the essential jurisprudential character of the game. Players, as the *Preamble* to the 2000 *Code* of the *Laws of Cricket* makes explicit, have a duty to the game and their teammates and to ensure the ongoing relevance of the spirit of the game.

But this of course faces an immediate and practical hurdle in the circumstances outlined by umpire Bucknor. The wicketkeeper in question was pressured into illegality by his fellow players and/or by the selectors who decide who is picked for inclusion in the side. If they breach their duty to the spirit of the game and to their teammate by 'coercing' his compliance and participation in a conspiracy against the *Laws* and ethical norms of the game, what is he to do? The threat is that in the case of non-participation, he will be excluded from the side. In such a case, he would, by upholding the spirit of the game and the *Laws of Cricket*, be excluded from playing the game. In such a case then, the question of epistemology and deontology once again rears its potentially ugly head. If he is excluded, the rest of the team by definition is in fact and in law doing something which is 'not cricket'. What game are they playing? How do we know and what do we do about it?

> We want international cricket to be tough and competitive but we also want to improve its image with the public. Umpires have agreed to support this drive by clamping down on language and behaviour that falls below reasonable standards.[11]

He added

> I am not asking for suspensions willy-nilly but that, for serious breaches that warrant suspension, this is the punishment imposed. I want respect for officials, respect for opponents and respect for the spirit of the game.[12]

Speed underlined his position in a letter to Match Referees. Therein he stated:

> I have been very pleased that a number of captains have spoken publicly of their intention to ensure that their teams play not only within the Laws but also within the Spirit of the Game. There have, however, been a number of incidents in matches over the past 12 months that have fallen below an acceptable standard. I have no interest in dredging up past incidents, and I point no finger of blame, but it is time to ensure that, moving forward, all of us charged with protecting the reputation of our great game meet the high standards expected.
>
> I would also add that I am concerned that some match officials have not always responded adequately to some of these incidents. As a result, there have been occasions when inappropriate behaviour has gone unpunished and other occasions when penalties have been inadequate to deal fully with the offence committed.[13]

Speed's interventions and the attitude of the ICC towards 'bad behaviour' have been generally well-received and applauded.[14] Yet, as I point out throughout the rest of this book, such behaviour, to a greater or lesser extent, has always been part of international cricket, and indeed of cricket at all levels, from the beginnings of the game to the present day. The argument is not settled as to whether we should stamp out bad behaviour on the field of play, nor whether we should and do support the ideals embodied in our understandings of the traditions and spirit of the game. These are 'motherhood' questions – no one supports unacceptable behaviour, that is why it is unacceptable. The debate is now, as it has always been, over what fits inside and what falls outside the spirit and *Laws* of the game. The debate, with or without the Match Referee and the *Code of Conduct* is now, has always been and will always be, about what is and is not 'cricket'.

Indeed, even a brief and cursory review of some parts of the rule of law and the rules of law since the creation of the new judicial officer, the ICC Match Referee, indicates the ongoing, complex and often contradictory nature of law-making and adjudication which again makes cricket jurisprudence so important for our understanding of the basic principles of law and democracy.

publicity is a recent occurrence and has come about only after sustained criticism of the ICC.[27]

Nonetheless what the Waugh/Nash case indicates is that there must still be some remaining idea of informal, democratic creation and application of rules of conduct between players. Waugh was unwilling to accuse the bowler openly, but at some level we must all know or suspect that he might well believe that what the bowler did was deliberate. Perhaps they exchanged words on the field, or after the match, or perhaps the next time Nash decided to stand in the way of an oncoming Australian player, a collision might not go in his favour. Similarly, the next time Dion Nash came to the crease with a bat in his hand, it is not inconceivable that Australian bowlers might send a few quick deliveries at his head and body. Anyone who knows about cricket and self-regulation, including any future Match Referee, would be well aware of what was going on in such a case, but, as in the instant example, would be hard pressed to 'prove' deliberation. This 'payback' could be seen to be just and fair according to the best traditions of the game, in which the players set and determine the extent of rule-violating behaviour which will be tolerated and inflict punishment on any transgressor according to tribal tradition. Someone else, faced with the same facts, might well characterize such retribution as lawless hooliganism, a violation of the *Laws* as well as the spirit of the game. Both would be right.

The introduction of the *Code of Conduct* and the Match Referee system has simply created a new type of disciplinary jurisprudence which carries with it its own set of rules, limits and complexities. If we return briefly here to the Viv Richards/umpire Barker case we find yet another example of the ways in which the law of cricket creates more and more law of cricket.

The vexed question of excessive or over-exuberant appeals is neither a new one nor is it one which has gone away since the introduction of the *Code of Conduct* and Match Referee system. Australia were warned for excessive appealing by Match Referee Clive Lloyd during an Ashes Test at Trent Bridge in 1993.[28] The next year the Adelaide Test between South Africa and Australia was marked by over-exuberant and excessive appealing from the visiting side.[29] In the West Indies, England were booed off the field by fans after numerous bat-pad appeals when the batter was, for the fans, the umpires and the Windies batters, obviously not out. A spokesperson for the ICC at the time commented 'Such appeals put unnecessary pressure on the umpires and the captains have been asked to control it.'[30]

They appear not to have listened. Controversy again emerged in 1999 when both South Africa and England were accused of issuing 'dubious appeals';[31] and in 2000 when Arshad Kahn was fined for excessive appealing by the Match Referee in a game against Sri Lanka.[32] When England toured Sri Lanka in the winter of 2001, the issue of excessive appealing again came to the fore.

Tour matches were marked by appeals for everything. Before the first Test, Hanumant Singh, the Match Referee, issued a statement. It said:

> I want it to be an appeal, not a demand. I want to stop people jumping and dancing up and down in front of the umpire and trying to intimidate him.

Several elements about appeals, jurisdiction, credibility and the spirit of the game come to the fore here. Healy did not loudly invoke the umpires' jurisdiction to adjudicate on appeal since, in his experience and that of virtually all cricketers and umpires, when the stumps fly or the bails are dislodged and the batter is bowled, everybody 'knows' he is out. In this case however, such collective and institutional knowledge was subject to a counter-context of Healy being known as a 'cheat' by the team against which he was playing. He was also known by all those who had seen the replay of the previous incident as one whose 'word' might be subject to some doubt.

Finally, it is also 'known' that it is sometimes difficult when a spinner is bowling and the keeper is standing up to the stumps, to be certain that the ball hit the stumps first or whether it came back off the body, gloves or pads of the keeper. When Shane Warne is spinning the ball out of the rough, on a bouncy and turning wicket at the SCG as he was here, knowing exactly what happened is difficult. Did the umpires consult because of Healy's record and reputation or did they consult because on the other facts, it was difficult for the umpire at the bowler's end, whose view of the ball might have been blocked, as it neared the stumps by the batter? Healy certainly feels that the former interpretive context was predominant in the umpires' minds, although the second explanation might be equally plausible. We probably can never know. What we do and can know is that the content of the ethical obligation imposed upon a fielder to appeal or not to appeal or to withdraw an appeal is uncertain, as is the process of adjudication on the appeal.[47] Do umpires consider each appeal on its merits as they are bound to by their judicial office? Do they consider past practice or reputation in deciding? Is there a conflict between these two positions? What do we mean by the merits of an appeal?

The problem did not go away. Later in the same series,

> Brian Lara fell in controversial circumstances to a catch which the West Indians claimed did not carry to the wicketkeeper. The Australians argued otherwise and countless TV replays could not provide conclusive proof one way or the other.[48]

Lara later confronted the Australian dressing room. No doubt previous encounters between the two, and between Healy and Lara's teammates, on disputed questions of law and fact played a major part in the confrontation. The legal issues were and are clear cut. The ethical issues remain somewhat more problematic. Phillip Derriman outlined the situation in the following terms:

> A well-known former Test umpire was at the SCG to see the Brian Lara catch on Tuesday and later studied slow-motion replays of it. He had no doubt Ian Healy took a legitimate catch, he said yesterday. If he had had to rule on it as a third umpire, he would have flashed the red light.
>
> This question of whether the catch was fair is really still the central issue of the Healy-Lara affair, even if the public's attention has since shifted to the controversy over Lara's stormy reaction.

respondent and not the appellant who at some level might be said here to bear the burden of persuasion. Finally, the *Law* indicates quite clearly that the consultation between the umpires must occur before the decision had been made. The language used is that the umpire may consult in such cases 'and shall then give his decision'. Arguably in the case described by Chappell the umpire could not have lawfully consulted with his colleague since he had in fact given the 'not out' decision before Chappell's intervention.

But the legal interpretive dilemma or controversy did not necessarily end there. Law 27(6) read

> The Umpire's decision is final. He may alter his decision, provided that such alteration is made promptly.

Here we find two levels of difficulty in the process of cricket adjudication. First, there is the apparent conflict between the two provisions of the *Law*. A decision was at once 'final' and at the same time it could be altered. In practice of course, this might simply have been found to deal with those cases in which an umpire has misspoken. But the language of the provision would also be broad enough to include cases where the umpire recalculated some or several factors which would indicate that a different decision should have been made. Whatever the solution to this apparent ambiguity in the legislative language, other wording of the same provision posed even more fundamental difficulties in the instance outlined by Chappell. The alteration had to be made 'promptly'. Assuming that we can get over the hurdle of interpretation and jurisdiction raised by the requirement that the consultation between umpires must (or should) precede the rendering of a decision, the question here would be whether a change in a decision under these circumstances could be considered to have been made 'promptly'. Here, a decision had been given, the batter is 'not out'. The captain spoke with the umpire, who then engaged in a conversation and consultation with his colleague. It would seem, at some level of common sense at least, that such facts make it difficult to assert that the alteration was made promptly and thus was in conformity with the *Laws* which determine the jurisdiction of the umpires and the procedures to be followed.

It would also still, of course, be possible to characterize the umpire's error here as an error of law. Because he was deciding while operating under a misapprehension as to the 'real' facts, he was committing an error which goes to his jurisdiction and was therefore an error of law. Upon inquiry, umpire Hoy replied that he did not think the ball had carried. He acceded to Chappell's request, asked his colleague at square leg and upon being informed that the ball had indeed been fairly caught by keeper Marsh, changed his decision and gave King out. Despite strong protest from the West Indies, the batter was forced back to the pavilion.

Chappell reported that the West Indian management called him a cheat, but he is adamant that his request to umpire Hoy was both legal and ethical. It might appear that Chappell has some grounds for believing that he was correct since all he did was ask the umpire to proceed according to the provisions of the *Laws* to

Unlike the ideal of Denning's cricketing Heaven in *Miller v. Jackson*, or Dante's cricketer's Hell, the ethical debate is not as clear or as one-sided as it may appear. Brodribb also expresses the dilemma:

> It was brave and commendable action by Meyer to say that he might have been wrong, though some may say that he ought to have kept silent, and upheld the idea of an umpire's infallibility.[9]

It is impossible to resolve here the age-old debate about whether the interests of justice are better served by uncritical devotion and respect for the ideal of judicial infallibility or by open, public critical debate. Suffice it to say that even in a law-based system of being-in-the-world like cricket, hard ethical existential choices and freedom remain, as they do for the justice system when faced with the cases of the Guildford Four or the Birmingham Six, or any number of other cases subject to review and overturned when the conviction has been found to have been 'dangerous'.

In Chappell's case, for example, the question was whether a clean catch had been taken. The umpire at the bowler's end is vested with jurisdiction and must make the decision in response to the appeal. Here, on what I believe is the best and most consistent interpretation of the provisions of the *Laws*, a judicial error was made. In the end of course, the records of the game will still indicate that Collis King was dismissed, caught Marsh, bowled Walker. The question and presence of televised replays, and the innovation of the third umpire, the television replay judge, has both lessened the likelihood of judicial errors and increased the controversies surrounding umpires and their essential roles as adjudicators.

While, as the *Laws* themselves make clear, the umpire's decision is final, this is not, in either fact or law, the final word about the law. The *Laws of Cricket* also provide that

> The captain of the fielding side may withdraw an appeal only with the consent of the umpire within whose jurisdiction the appeal falls and before the outgoing batsman has left the field of play, If such consent is given the umpire concerned shall, if applicable, revoke his decision and recall the batsman.[10]

Some may see such an intervention as a direct affront to the umpire's authority and as causing serous embarrassment to the umpire who has made his decision. From a strictly formalist perspective, it must be underlined, however, that the captain may only withdraw the appeal 'with the consent' of the umpire. Therefore final jurisdiction remains with the umpire. It may be argued, then, that no embarrassment is caused to the umpire both because he retains final jurisdiction over the dismissal and also because a request to withdraw the appeal does not necessarily indicate disagreement with the umpire's decision as a matter of law. Instead it may well indicate a captain's desire to abide not by the law but by a more 'sporting' view of the ethics of the situation. In such cases, the captain

justification in appealing, the two captains failed in their ethical and legal duties to the game and to their teams, all because, it would appear, no one knew the *Laws*. Indeed, it may well be that Richards acted appropriately, or at least ethically, in so far as it might be claimed that he did not know what the *Laws of Cricket* said about situations such as these. If we assume that a breach of the spirit of the game can only be said to occur in circumstances where the player is aware of the norms in question, then it might be the case that Richards did nothing 'wrong' or more precisely, nothing knowingly wrong. If his duty to the spirit of the game carries with it some notion of a mental element to the breach of the relevant norms, then that duty could only exist if and when he knows that the umpires have committed an error at law. If he is unaware of that state of fact and law, he cannot be said, under this analysis, to have breached his duty to the spirit of the game by refusing to recall Jones.

Of course, one might equally argue that even if Richards erroneously believed that the umpires had made no actual mistake of law, that a batter could be given out run out if he leaves his wicket mistakenly believing that he is out, not knowing that 'no ball' has been called, such a strict adherence to the absolute letter of what he thinks is the law is itself a violation of the spirit of the game. In addition, it might also be asserted that part of a captain's obligation to ensure fair play and to maintain the spirit and traditions of the game, is to actually know what the *Laws of Cricket* say. In other words, ignorance of the *Laws*, by the captain of a Test side, is no excuse. Thus, Richards' breach of the spirit of the game at some level predates the Jones' dismissal and was only actualized when that breach resulted in the unjust and unlawful dismissal of another player.

The analyses which could be offered here would be endless. Yet while this is indeed a unique case because it involves a clear 'error of law' by both umpires and by all the players on the field of play (assuming good faith), the debate which followed raises the same types of issues as other examples not based on an error of law and absence of jurisdiction. Then Australian coach, Bob Simpson, complained that Australians would never act in such a way, only to be immediately contradicted by captain Allan Border's statement. Not one of the eminent television commentators, including three former Australian captains, was apparently aware of the actual provisions of the *Laws* in this case, although Richie Benaud subsequently explained that he himself referred to Tom Smith's book to discover that the umpires had erred.[13] The umpires, breaking judicial precedent, attempted to justify their illegal decision after the fact, yet, revealed only 'little more than an embarrassing exercise in self-justification' according to Brindle. Finally, historical reference to the 'good old days' school of interpretation, reinforcing a key point about the content of a captain's obligations, could point to the fact that Sir Donald Bradman studied for and passed the umpire's examination when he played cricket and would no doubt have been aware of the *Laws* governing such a case, unlike Richards or Border. And all of this would be true, and all of this would be cricket.

Nonetheless, a captain's decision to withdraw an appeal against an opponent is most commonly seen as laudatory and as giving evidence of the strength and

> Players and/or Team Officials shall at no time engage in conduct unbecoming to their status which could bring them or the game of cricket into disrepute.[18]

Paragraph 5.1 of the *Code of Conduct* provides that

> Where the facts of or the gravity or seriousness of the alleged incident are not adequately or clearly covered by any of the above offences, the person laying the charge may allege one of the following offences
>
> (A) breach of Rule C1 – unfair play; or
> (B) breach of Rule C2 – conduct that brings the game into disrepute.

It is not my purpose here to review the law relating to natural justice, procedural fairness and disciplinary bodies. However a simple reading of the text, combined with the fact that the ICC is well aware of the idea that such proceedings must be conducted in accordance with the rules of natural justice, must raise concerns.[19] Section 5.1 in the language which creates the offence under which Jacobs was convicted, does so in circumstances where the gravity or seriousness of the offence are not adequately or clearly covered and again simply reiterates C1 and C2 which are themselves 'unfair play' and 'conduct that brings the game into disrepute'. These provisions seem to create offences which are, in many circumstances, so vague and unknowable as to be unfair and disreputable themselves.

In addition Jacobs was found to have breached the 'cheating or sharp practices' provisions of the *Preamble*. Here we find a judicial determination of the existence of a positive duty to withdraw an appeal under the *Code of Conduct* and the *Preamble* even when, as I have argued, such an action would be a literal impossibility under the *Laws of Cricket*. Referee Lindsay has concluded that the list of offences under Article 5 is merely indicative and not exhaustive. He has created, or discovered, and imposed a positive obligation on all cricketers to withdraw an ill-founded appeal. He has also found that failing to do so brings the game of cricket into disrepute. One must nonetheless ask exactly what the substantive content of such an obligation now is. Does it apply only when the player 'knows' that the appeal is baseless or without an actual legal or factual foundation? Does it apply more broadly when a player 'should' know, or finally does it apply when video evidence for example simply reveals the absence of a proper basis for an appeal regardless of the state of mind of the player? Who bears the burden of proof and what sort of proof will satisfy that burden?

Let us go back to the case of Ian Healy and the disputed catch of Brian Lara or any number of other incidents when there is for some doubt as to whether the ball carried. Usually, in such cases, for others there is no doubt that the ball bounced before it was taken and for still others, no doubt at all that the catch was fair and the batter is out. Is there now an obligation at law and in ethics not to appeal, or to withdraw an appeal by others? What happens to the text of Law 27(8) which clearly gives the captain and only the captain the right to seek permission to withdraw an appeal? Clearly one might for example argue that in

appeal. It is hardly surprising that former Prime Minister John Major or Australian leader John Howard are both fans of the game. Unfortunately the ideological appeal of cricket as law and order and the political consequences for some leaders of this set of understandings of the game and of the law, are counterfactual. They are myth, not reality and almost certainly at the most important levels, not law. The entire history of cricket and international Test cricket in particular, is permeated with dramatic instances of total and public disrespect for the integrity of umpires' decisions and for the rule of law in cricket. Writing in the Badminton Library book on cricket in 1882, A.G. Steel described umpires as receiving 'certainly no thanks, and too frequently something which is not altogether unlike abuse'.[1] At the zenith of Victorian culture, umpires, so it would seem, were subject to disrespect and abuse. This, however, did not prevent Steel from describing respect for the umpire's decision as 'The chief principle that tends to harmonise the game . . .'[2] While these two descriptions of the state of respect for the umpire might appear contradictory, Steel does go on to solve our dilemma when he writes

> First-class amateur cricketers should remember that it is impossible for them to pay too much deference to the decisions of Umpires, as it is from them that the standard or tone of morality in the game is taken.[3]

The general tone of disrespect for the umpire's decision, for the Victorian idealists and their present day acolytes, comes not from the true morality or character of cricket but from the invasion of foreign, lower-class elements. The true morality of cricket which demands complete and utter respect for authority is the morality of the Victorian upper-class. A fine statement and no doubt reflective of one view of Victorian morality which to this day informs one view of the ethical nature of cricket. On the other hand, there is a competing and contradictory view of the nature of ethical values in Victorian England and in Victorian cricket, among cricketers of all classes.

This other view does not reject the ethical merit of accepting an umpire's decision without question. Nor does it suggest that cricket did not, or does not, in fact, reflect these values. It merely puts forward the argument that the ethical or normative context of the game of cricket is a highly complex web of competing structures and values. The events of the earliest Tests between England and Australia as well as current controversies indicate that the interconnections between the Law, ethical norms and cricketing practices are more complex than any simple and simplistic reference to either the mode of production or gentlemanly conduct in Victorian England and far-flung colonies, can solve.

In what is now considered the first Test, in Melbourne in 1877, the ideological norms of sportsmanship, ethical behaviour and respect for the umpire's decision were clearly the practice. Australian captain Dave Gregory was run out and 'walked' before the umpire's decision. The umpires 'gave three decisions in Australia's favour and one in England's favour. Each time the batsman walked without argument when the decision was given.'[4]

During the 1878–79 tour of Australia by Lord Harris' team, however, a different ethos evidenced itself.[5] Billy Murdoch, the Australian batter was given out (run out) by umpire Coulthard, an umpire appointed by the English team. Gregory, the New South Wales captain, protested and refused to play unless Coulthard was withdrawn. The English captain, Lord Harris, rejected the ultimatum, an 'angry mob' of spectators invaded the field, Lord Harris was struck by an enraged fan and the mounted police tried to restore order.

These events could be said to reinforce Steel's view, if one were to see them as a result of the angry behaviour of a bunch of ill-bred colonials. But the context of the SCG 'riot' is more complex than that. First, it must be noted, as already mentioned, that gambling was an important part of Victorian era cricket, both in Australia and in England, and there is some evidence that the crowd were incited by bookmakers anxious over the effect of Murdoch's dismissal on their coffers. Secondly, it must be noted that many of the Australian players, including Gregory, had previously toured England and were convinced that English umpires were in the pay of wealthy amateur cricketers and 'knew which side their bread was buttered on'. For the Australians then, when an English umpire gave an Australian player out, it was, from experience, a case of justice not being done or not appearing to be done. In either case, the fact that umpires were appointed by the opposing sides might well indicate, in light of the historical and even current debates both over neutral umpires, and more frequently over the capacities of all umpires, that Victorian upper-class cricket may well have been 'not cricket'.

Other incidents of disagreement with, or disrespect for, an umpire's decision indicate that the problem has never been limited to the lower classes or to Larrikin Colonials. In a match between Hampshire and Notts in 1922, J.A. Newman lost his temper and kicked down the stumps. His captain asked him to leave the field.[6] A. Ward of Derbyshire refused to bowl after disagreeing with an umpire's decision in a 1973 match with Yorkshire. He too was sent from the field.[7] While both Newman and Ward apologized subsequently and recognized the error of their ways, and while both were immediately disciplined by their captains, their behaviour does indicate a clear transgression of the norms of quiet acquiescence, which if the nostalgics are to be believed, were universally respected.

Similar instances have occurred on a somewhat regular basis in international cricket. In New Zealand, West Indian pace bowler Michael Holding displayed his displeasure with a decision by kicking the stumps from the ground.[8] Again in New Zealand, after being frequently no-balled by umpire Goodall, Colin Croft, 'deliberately barged into umpire Goodall and also knocked the bails off. On the third day, the West Indies refused to come out unless Goodall was removed: after some delay the game continued, but the West Indies threatened to go back home that evening'.[9]

In 1987–88, the English bowler, Graham Dilley, was fined £250 by his own side 'when appeals for a catch were rejected during the first Test match against New Zealand in Christchurch'[10] and he displayed his displeasure. On two separate

occasions, English batter Chris Broad demonstrated his own lack of self-control. During the Bicentennial Test in Sydney, after spending seven hours at the crease and scoring 139, he 'petulantly smashed the stumps with his bat after playing on to Waugh. His action was the mark of a man who finds it difficult to accept dismissal, whatever his score at the time'.[11]

For being a poor loser and bringing the game into disrepute, he was promptly fined £500 by his own team management. In Pakistan, after being given out caught at the wicket, he refused to leave the crease, staying for almost a minute and departing only after his partner, Graham Gooch, persuaded him to do so. He was issued, much to the disappointment of Pakistani officials and English writers, only a 'stern reprimand'.[12]

Other brief examples from more recent times demonstrate that even the creation of the new Match Referee system, with the explicit provisions of the *Code of Conduct* outlawing dissent, and the imposition of heavier sanctions, have done little to deter or eliminate dissent.[13] If dissent indeed attacks the very integrity of the judicial system upon which cricket is built, by challenging the authority of the judiciary and the rule of law, one might wonder whether the game of cricket is still being played. At the same time it might also be usefully be noted that of the eighteen 'convictions' recorded under the *Code of Conduct* in the season 1999–2000, only one was in fact for showing dissent. It may now be the case that like much law and order rhetoric, 'the sky is falling' proponents of the decline of cricket behaviour may be overstating their empirical case. Or, it might be that the decline in dissent is attributable to increased vigilance and sanctions. The debate will go on as to which is cricket's chicken and which is the egg.

Following a One-Day game against Australia in 1997, Pakistani player Aamir Sohail was reported by the umpires to the Match Referee for dissent. He stood his ground after having been caught and given out, apparently on the basis that the ball which he struck was above shoulder height, prohibited under One-Day Playing Conditions, and should have been called a no-ball. After finally leaving his crease, he pointed at the umpires who were standing together and spoke to them. He was found to have had a previous conviction for a similar offence, having been fined for tossing his bat when given out in a Test match in Hobart in 1995. He became only the second player to be suspended when Raman Subba Row inflicted a one-match ban.[14]

One can see this as the simple application of a more severe penalty on a repeat offender who has breached an important if not fundamental norm of cricket's rule of law. However, one might also bring other elements to bear which might complicate both our understanding of the application of the law and of the justice issues involved. Sohail's previous conviction for a dissent-based offence also came at the hands of Subba Row. This could mean that the judge had a better and more complete knowledge of the accused's record and comportment. Or, it might be argued, that there is some level at which one might apprehend a possibility of bias or prejudgement here. Is the Match Referee making a decision purely on the merits at the stage of deciding whether the offence has been committed and then invoking the defendant's past acts at the

sentencing stage, or is he perhaps (or could it be perceived by an observer) more likely to believe that Sohail committed the offence because he has a past history? I am not suggesting that Subba Row violated the rules of natural justice here or that Sohail was not in fact guilty of the offence in question. Instead I am again pointing out that we can only answer these questions, and we can only take a position on the more basic legal and jurisprudential questions of breakdown of law and order in cricket, if we are willing to admit and examine these complicating factors.

Let us examine Sohail's first offence, the bat throwing incident at Bellerive Oval. At first blush, this appears to yet another example of petulant and generally unacceptable behaviour by a cricketer unhappy with his dismissal. But, as one account indicates, this might be subject again to nuance and deconstruction. Thus, Sohail was dismissed after chipping a simple catch, from a medium pace delivery, to the fielder at mid-wicket. Therefore, his subsequent petulance in throwing his bat, was not an act of 'dissent' strictly speaking, but one of disappointment and disgust at the ease with which he, as a top order batter, surrendered his wicket in a Test match. This does not, of course, necessarily go to the acceptability of his actions, but it does perhaps, in some circumstances, mean that he was not a recidivist when he later disputed his dismissal. For example, under the current provisions of the *Code of Conduct*, it is a Level 1 offence to show dissent (1.3) or abuse cricket equipment (1.2). Under this legal regime, any offence like that which Sohail committed at Hobart would almost certainly fall under the latter (1.2) count.

It is a Level 2 offence to either repeat 'any Level 1 offence' in a specified time period (2.1) or to 'show serious dissent' (2.2). Assuming again that this was the nature of Sohail's action over the no-ball issue, he may or may not have committed a Level 2 offence depending upon whether one considers that he has shown 'dissent' (Level 1, 1.3) or 'serious dissent'. What is clearly open to disputation and legal argument is whether the Hobart offence and the Sydney offence were 'unrelated' as a matter of law. Arguably, one was a case of equipment abuse and the second more clearly an instance of dissent. Of course, it will also have to be borne in mind that Section 5.2 permits the Referee to take into account 'the prior record of the person accused'; again, however, this must apply only to the penalty phase.

Finally, as far as the judicial history of Aamir Sohail is concerned we might turn to the following:

> Sohail rehearsed the shot with such vehemence as he strode off that he dropped the bat, an incident he paid for heavily when referee Raman Subba Row fined him half his match fee and added a two-match suspended sentence.[15]

Arguably, if we were to accept the description here as literally true, then it becomes possible to create an argument that Sohail was in fact and in law 'wrongly convicted'. If he was merely practising the shot on which he was dismissed and the bat, as might be inferred, left his hand accidentally, it could be argued that he did not in fact 'abuse' his cricket equipment. If we believe that

(1) the bat did not just slip and he acted deliberately or (2) he was negligent in not maintaining a proper grip on the bat or (3) his vigorous or vehement practice was negligent or (4) 'abuse' of equipment is a strict or absolute liability offence, or one requiring intent or negligence, then he was rightly convicted. What is evident is that it is not until we address and decide each of these questions that we can even begin to discuss either Sohail's guilt or the basic issue of whether his case or cases offer further proof of the declining standards in relation to behaviour and dissent.

For example, a most vigorous and interesting public debate about the issue of 'the man in white is always right', occurred during a first-class, four-day match between the touring Pakistani team and Victoria in Melbourne in Jan. 1990. In that match, umpire Robin Bailhache, a veteran of 27 Test matches, ordered Pakistani spin-bowler, Mushtaq Ahmed, out of the bowling attack after warning him for running on the pitch.

Law 42(11) stated:

> 11. *Players Damaging the Pitch*
> The Umpires shall intervene and prevent Players from causing damage to the pitch which may assist the Bowlers of either side. See Note (c).
>
> (a) In the event of any member of the fielding side damaging the pitch the Umpire shall follow the procedure of caution, final warning and reporting as set out in 10(a) above.
> (b) In the event of a Bowler contravening this Law by running down the pitch after delivering the ball, the Umpire at the Bowler's end shall first caution the Bowler. If this caution is ineffective the Umpire shall adopt the procedures, other than the calling of 'no-ball', of final warning, action against the Bowler and reporting.
> (c) In the event of a Batsman damaging the pitch the Umpire at the Bowler's end shall follow the procedures of caution, final warning and reporting as set out in 10(c) above.

Law 42(10)(c) provided for the following system of warnings:

> (i) In the first instance he shall caution the Captain of the Fielding side and inform the other Umpire of what has occurred.
> (ii) If this caution is ineffective, he shall repeat the above procedure and indicate to the Captain that this is a final warning.

...

Finally, note (c) of Law 42 defined the 'danger area' as follows:

> (c) Danger Area
> The danger area on the pitch, which must be protected from damage by a Bowler, shall be regarded by the Umpires as the area contained by an

> imaginary line 4 ft/1.22 m. from the popping crease, and parallel to it, and within two imaginary and parallel lines drawn down the pitch from points on that line 1 ft/30.48 cm. on either side of the middle stump.[16]

After Bailhache ordered Mushtaq out of the attack, Pakistan team manager Intikhab Alam ordered his team off the field

> Only intense negotiations between Intikhab, Umpires Bailhache and Bill Sheehan, Victorian Cricket Association executive director Ken Jacobs and State coach Ian Redpath saved the game following a 33-minute delay.[17]

The debate which followed the Pakistani walk-off and the issues which are raised by the case point to the fundamental contradictions which pervade not only cricket but, by clear analogy, apply to debates within 'law' about formalism, positivism, ethics, justice, adjudication, interpretation, bias and racism. I will now briefly examine some of them, in an attempt to highlight the complex stories we create for ourselves from and about our social texts, especially those of cricket and law.

From the point of view of a formalistic application of the *Laws*, it would seem to have been quite clear that pursuant to Law 21(3),

> (a) A match shall be lost by a side which, during the match,
>
> (i) refuses to play[18]

Under a literal reading it was apparent that when a team leaves the field as did the Pakistanis this *would*, *should* and *does* constitute a 'refusal' to play. This is the view taken by Peter Roebuck who claimed that the Pakistani walk-off 'perpetuated an outrage'. For him there is no doubt that 'By leaving the field Pakistan had conceded the match and so stumps should have been drawn, reports filed, and the game awarded to Victoria.'[19]

If anything is certain in the uncertainty of Law and of Cricket, it is that it is not always clear what the 'correct' legal or ethical decision or outcome should be. On the surface and plain meaning of the text, Roebuck was apparently correct and Law 21(3)(a)(i) was not subject to much contrary interpretation. Yet there are other factors, legal, ethical and practical which make the context of umpire Bailhache's decision and the subsequent Pakistani action more complex than they appear at first sight and which indicate the false security of appeals to plain language and literalist interpretation of what must always be complex social texts and meanings.

First, as a matter of fact and of Law, Law 21(3)(a)(i) only became relevant because the Pakistanis walked off and they only left the field because Bailhache invoked the provisions of Law 42(11) against Mushtaq for running on the pitch. What if the umpire was 'wrong', not in fact but *in law* in applying Law 42(11)? Only an absolute or crude positivist could then claim that some form of

Pakistani protest was not warranted. And it is exactly the Pakistani's position that the umpire acted, in effect, without jurisdiction, ultra vires, illegally.

Under Law 42(11), the umpire who saw a bowler running on the wicket had to follow the procedure set out under paragraph 10(a) of that Law. In other words, he had to give a first caution and then a second and final caution before proceeding to order the bowler out of the attack. According to the Pakistani team manager Intikhab, umpire Bailhache failed to inform the Pakistani captain of the second warning. Under this version of the facts then, the umpire acted improperly and without jurisdiction in ordering Mushtaq out of the attack because the second warning, a condition precedent to such action, had not been given. The walk-off could then be seen to be an attempt to ensure not only that the spirit of the game was upheld, but that the letter of the Law was adhered to as well.

Umpire Bailhache maintained throughout that he

> ... went through all the correct procedures leading up to the event and they just decided they couldn't play under that interpretation and walked off the ground.
> ...
> I did what I thought was right.[20]

It can be said, Bailhache's contention notwithstanding, that the official reason given for permitting play to resume and to not invoke the letter of Law 21(3) was that the officials involved in the subsequent negotiations appear to have accepted the Pakistani contention that they 'believed' only one warning had been given.[21] While this turn of events might be interpreted as merely conforming with the Law which permits an umpire to reverse his decision, that interpretation again would be clearly disingenuous given the Law's formal requirement that the reversal be 'made promptly', not after 33 minutes of negotiation have taken place. Moreover, umpire Bailhache insists that he *did* give two warnings so that only an apparently stretched reading of the Law would allow the element of Pakistani 'belief' to count as one of the elements of the procedure of warnings under Law 42. It is perhaps better and more correct to see the outcome of the negotiations with the Pakistani team as fitting into the category of 'the best interests of the game'.

There are, however, other factors which must be taken into account before anyone can be in a position to even attempt to properly analyze or classify these events. Yet another factual circumstance was invoked by Intikhab to 'justify' his action. According to this new element, Mushtaq was wearing rubber-soled shoes rather than spikes. For the Pakistani this could only mean that he did not *in fact*, damage the pitch. Not surprisingly, Peter Roebuck dismissed this part of the Pakistani position as 'utter balderdash'. Roebuck's attitude to this claim is, of course, a familiar one in legal debates. From his formalist position, the law is the law is the law. Mushtaq ran on the pitch in the danger area as defined, he was properly warned and the full and formal weight of the *Laws* should have been

brought down upon him and, following their walk-off, upon the whole of the Pakistani team. No 'fact' other than the umpire's decision is of importance or interest.

Intikhab, on the other hand, proposed that the formalist/literalist approach to the interpretation of the *Laws* should have been replaced by a more liberal, purposive one. For him, the purpose of Law 42(11) was, as the heading itself suggested, to prevent players from damaging the pitch. It is not even that damaging the pitch *per se* is a moral or social evil which must be stamped out. Rather, to take the argument one step further, that which must be prevented, in the words of the Law itself, is a Player 'causing damage to the pitch which may assist the Bowlers of either side'. A pitch damaged in an area which would change the ball's trajectory would give an unfair advantage to the bowler. Intikhab's interpretive position is straightforward, the purpose of Law 42 was to prevent damage which would give an undue advantage to the bowler. Therefore, both the wording and purpose of the legislation indicate that the intent of the Law was not to prevent *all* running on the wicket but rather running which *damages* the danger area. Unlike spiked shoes, rubber-soled shoes do not cause physical damage to the wicket. Therefore umpire Bailhache was incorrect and exceeded his jurisdiction when he issued a warning under Law 42(11), because Law 42(11) applied only in cases of actual *damage* to the pitch.

Besides these various interpretive factors, other elements of the match seen as a whole also serve to make the issues surrounding the walk-off more complex and more heavily contextualized than Roebuck's formalism would allow. First, we have the peculiar nature of the offence and its relationship with the parties involved. Only seven first-class bowlers (including Mushtaq in this match) had ever been warned off, in Australia, for running on the wicket. The Law was one, then, which was rarely applied and this might indicate that it should have been interpreted restrictively if there was any question of it being invoked in circumstances of desuetude.

Despite its rarity, the Law and umpire Bailhache were familiar friends, for it is he who had expelled the last four offenders.[22] Two views of the importance of and interpretation to be given to this fact come readily to mind. First, we have the position of the formalist Roebuck: 'Apparently, too, Bailhache is a stickler for rules, but players know this as children know their teachers and surely can accommodate him.'[23]

Another view, equally appropriate to cricket or to any judiciary, is that the umpire was considered by the players to be a bastard, and that his rigid adherence to the *Laws* was attributable in their view not so much to ideals of truth or duty, but to a petty tyranny. Just as there are difficult judges, there are difficult umpires and they should not be allowed to cloak otherwise unacceptable and unjust behaviour in the mystique and power of their position. Formal mechanisms relating to the removal or judges or umpires for misbehaviour or inappropriate actions, are often lengthy, complicated and subject to great controversy since they raise in stark terms the ideals of an independent judiciary. It may well be that adherence to some understanding of the higher interests of the traditions of

the game needs to be invoked and deployed in a democratic fashion by the participants in the process. It might also be useful to ask, since we have undergone a period of legislative change since the Pakistanis left the field, what impact the new text of the *Laws of Cricket* might have here.

Law 42(11) is headed 'Damaging the Pitch – Area to be Protected'. Paragraph (a) now states that

> It is incumbent on all players to avoid unnecessary damage to the pitch. It is unfair for any player to cause deliberate damage to the pitch.

Paragraph (b) defines the area to be protected and Law 42(12) deals with the case at hand of a bowler running on to the pitch in the danger area. It provides in paragraph (a)

> If the bowler, after delivering the ball, runs on the protected area as defined . . . the umpire shall at the first instance, and when the ball is dead,
>
> (i) caution the bowler.

The new provisions also still provide for a system of second warning and on a third violation, for the bowler to be taken out of the attack.[24] Are we now any better off in dealing with umpire Bailhache's actions? The *Laws* no longer make a specific reference to damage which will advantage a bowler. The text now simply refers to the act of deliberately damaging the pitch as 'unfair'. The question which will have to be decided under the new *Laws* is that of the relationship between the provisions of Law 42(11) (a) and 42(12). It is unlawful under the former to 'cause deliberate damage to the pitch'. Under the latter, a breach appears to have been committed if and when a bowler 'runs on the protected area'. Again, we face a familiar set of questions. Is it in reality and under a correct interpretation of the *Laws* an offence to run on the danger area or is it still necessary to add an element of 'causing deliberate damage'? In other words, one interpretive strategy would argue that the offence in 42(1) is one of strict or absolute liability. It requires only that a bowler run on the area regardless of either actual damage or 'deliberation'. This is the view offered by one leading text for umpires. Thus

> It must be realized that the offence here is not damaging the pitch, though this may be a consequence; the offence is running on the protected area in the follow through.[25]

The other position would assert the necessary connection between the two sections and would urge a broad and purposive hermeneutic technique and practice. The second text involves no change from the 1980 *Code*. The purpose of these provisions is clearly expressed and known to practitioners. Its goal is to prevent deliberate damage to the pitch, and regardless of the change in the legislative language, this

is meant to prevent disadvantaging a batter and giving an advantage to a bowler as the surface deteriorates 'unnaturally'. Thus, a bowler must run on the proscribed area and intend to and perhaps even actually, inflict damage. I will not further belabour the point. Suffice it to say that the interpretive possibilities of cricket in these circumstances remain open.

At the same time, a judgement can be made on the issue of the legality and/or appropriateness of the Pakistani response to the Bailhache decision only by considering further factors which together constitute the entire context of the match. For example, we might also consider the fact that Intikhab, the team manager, had, as a player, been warned off in a match between Pakistan and Queensland some 17 years previously.[26] Nor was this the only run-in between Bailhache and the Pakistani bowlers. After the walk-off and subsequent return, heated words were exchanged between the Pakistanis and the umpire when he warned and no-balled Aaqib Javed for intimidatory bowling. During one occurrence, Aaqib bowled three bouncers at Victorian captain Simon O'Donnell, was warned by the umpire and promptly reacted by bowling a fourth.[27] It would be possible to see such action as nothing more, as does Roebuck, than childish behaviour, if one's view is informed by an unadulterated and narrow formalism. The bouncers, the warning, the reaction, the no-balling all took place in the context of all the factors I have mentioned in discussing this match and in the context of one more key factor which has not yet been discussed, bias, or more politely, perceptions of bias, with an undercurrent of nationalism and racism. Given persistent Pakistani complaints about the quality and prejudice of umpires on their various tours, it is impossible not to interpret these events as being at least partially influenced by these factors, either 'in reality' or as a perception which shapes the Pakistani view of many questionable umpiring decisions, particularly in Australia.

Additional credibility is given to the Pakistani position by two factors. The first is that, as has been seen, disputes with umpires have a long and storied history and many of them have occurred between visiting teams and 'home' umpires. At the level of the perception of some participants, nationalistic bias has been a consistent element in Test match and international umpiring. The second reason which makes it more difficult to dismiss or criticize in absolutist terms the actions of the Pakistani team, is the fact that what is considered by almost everyone in the game as the most (in)famous event of disrespect for the *Laws of Cricket* and the sanctity of an umpire's conduct and decision occurred in Pakistan. It involved, not the Pakistan team, but the team which is, in the mythology of 'the man in white is always right', meant to embody respect for the higher ethics of the game. Of course, I am speaking about the infamous finger-pointing row between then English captain Mike Gatting and Pakistani umpire Shakoor Rana.[28]

During the Faisalabad Test, England were bowling. Near the end of the day's play, Gatting moved David Capel from his position at deep square leg to one closer to the wicket in order to prevent a single. As Eddie Hemmings commenced his bowling run-up, Gatting signalled to Capel that he was now in

a correct position. Umpire Shakoor stopped play to inform the Pakistani batter Salim Malik of Capel's new position. He reproached Gatting for unfairly moving Capel behind Salim's back. Gatting demurred. The language was basic, and Gatting is part of cricket immortality for the pictures of this finger-wagging confrontation.

Shakoor refused to return to the field the next day unless Gatting apologized, Gatting refused, the third day's play was lost to negotiation; after further discussions on the next (rest) day could not produce a compromise, the Test and County Cricket Board (TCCB), English cricket's governing body at the time, instructed Gatting to apologize, which he reluctantly did. The English side decided to continue to play under protest and issued a public statement declaring:

> What is beyond dispute is that the umpire was the first to use abusive language to the England Captain. This was clearly heard by England players close to the incident. Mike Gatting was ready to apologise two days ago for his response, provided the umpire would do the same.
>
> ...
>
> The incident was sad for cricket but the solution forced upon us is even sadder.[29]

For the formalist or even the cricket moralist, the fact that Gatting is to be thoroughly condemned for breaking the written and unwritten rules of cricket law and etiquette is beyond dispute. With the benefit of hindsight, such moralizing is easier for many of us to accept, given that Gatting later lost the captaincy allegedly for cavorting with a 'barmaid' in his hotel room on his birthday and led a rebel English tour to *apartheid* South Africa. But neither facile moralizing nor retroactive justification based on subsequent moral failures offer much succour in dealing with the issues of the contradictions and complexities of cricket law and practice raised by this and similar events. Again, the many factors which should enter into the moral/legal calculus are confusing, as are the various interpretive perspectives which are open on the hermeneutic circle. In addition to the obvious national hermeneutic perspectives, English, Pakistani, or more 'neutral' Australian, it would also be possible to view these events from the standpoint of other interpretive sub-communities e.g. umpires who have been 'abused' by players, players who have been 'abused' by umpires. Each, like varying accounts of 'events' in civil or criminal trials, is founded in a validity claim, the 'objectivity' of which its proponents would all loudly proclaim.

There is, again, dispute over the 'facts'. Gatting claims that he did warn Salim about the fielding change, Shakoor's contention is that Gatting heaped abuse at him. There is, of course, a strong moral argument that Gatting, no matter the provocation, should never have replied as he did, and the English players' public statement would indicate that Gatting himself would agree. On the other hand, there is an equally strong argument that Shakoor's behaviour was inappropriate. Even if Gatting did heap abuse on him, the normal and judicially correct thing to do would be to maintain his personal dignity and to ensure respect for his

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